

1
2 UNITED STATES DISTRICT COURT
3 DISTRICT OF NEVADA

4 Catherine Matthews,
5 Plaintiff

6 v.

7 Gaughan South LLC, et al.,
8 Defendants

Case No. 2:23-cv-00750-CDS-BNW

Order Granting Defendants'
Motion to Dismiss and Closing Case

[ECF No. 10]

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10 This case brought by pro se plaintiff Catherine Matthews involves an interaction
11 between herself and employees at The Southpoint Hotel Casino and Spa on December 4, 2022.
12 Matthews alleges that because she is a person of color, she was refused service and retaliated
13 against by Southpoint employees in violation of the Civil Rights Act of 1964 and Title II of the
14 Civil Rights Act of 1964. Defendants Gaughan South LLC, Gaughan Straight Holdings, Inc., The
15 Southpoint Hotel Casino and Spa, and Steve Harris (collectively, defendants) move to dismiss
16 the complaint for lack of jurisdiction and failure to state a claim upon which relief can be
17 granted. Matthews' opposition to the motion to dismiss was due on or before September 13,
18 2023.¹ As of the date of this order, no opposition has been filed. For the reasons set forth herein,
19 defendants' motion to dismiss is granted.

20 **I. Legal Standard**

21 Unlike a motion for summary judgment, a district court is not required to examine the
22 merits of an unopposed motion to dismiss before granting it. *See Ghazali v. Moran*, 46 F.3d 52, 54
23 (9th Cir. 1995) (the Ninth Circuit refused to extend to motions to dismiss the requirement that
24 a district court examine the merits of an unopposed motion for summary judgment before
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26 ¹ See ECF No. 10; *see also* Local Rule 7-2(b) (stating that the deadline to file and serve any points and
authorities in response to the motion—other than summary judgment—is 14 days after service of the
motion).

1 summarily granting it pursuant to a local rule). Thus, a district court may properly grant an
 2 unopposed motion to dismiss under a local rule. *Id.* at 53. Local Rule 7-2(d) provides that the
 3 failure of an opposing party to file points and authorities constitutes that party's consent to the
 4 granting of the motion. LR 7-2(d).

5 Before granting an unopposed motion to dismiss, the court must weigh the following
 6 factors: "(1) the public's interest in expeditious resolution of litigation; (2) the court's need to
 7 manage its docket; (3) the risk of prejudice to the defendant; (4) the public policy favoring
 8 disposition of cases on their merits; and (5) the availability of less drastic sanctions." *Ghazali*, 46
 9 F.3d at 53 (quoting *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir. 1986)). The Ninth Circuit
 10 has recognized that the first and fourth factors cut in opposite directions. See *Yourish v. California*
 11 *Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999) (first factor always weighs in favor of dismissal);
 12 *Hernandez v. City of El Monte*, 138 F.3d 393, 401 (9th Cir. 1998) (fourth factor counsels against
 13 dismissal).

14 II. Discussion

15 The first two factors—the public's interest in expeditiously resolving this litigation and
 16 the court's interest in managing its docket—weigh in favor of dismissing Matthews' claims.
 17 Even now, Matthews has failed to file a response even though over a month has passed since the
 18 September 13, 2023 deadline. ECF No. 10. See *Yourish*, 191 F.3d at 990 ("[D]ismissal . . . serves the
 19 public interest in expeditious resolution of litigation as well as the court's need to manage its
 20 docket because Plaintiffs' noncompliance has caused the action to come to a complete halt,
 21 thereby allowing Plaintiffs to control the pace of the docket rather than the court.") (quoting
 22 *Ash v. Cvetkov*, 739 F.2d 493, 496 (9th Cir. 1984)). Here, Matthews' non-compliance slows the
 23 expeditious resolution of this litigation by delaying the set briefing schedule as well as interferes
 24 with the court's ability to manage its docket. *T.G. v. Bd. of Trustees*, 2022 U.S. Dist. LEXIS 133058,
 25 *5 (D. Mont. July 6, 2022) ("The Court cannot manage its docket if Plaintiffs do not respond to
 26 motions. . . [t]his case [] cannot proceed if Plaintiffs fail to participate.").

1 The third factor also weighs in favor of dismissing Matthews' claims. There is no apparent
 2 risk of prejudice to defendants by dismissing the action at this time; indeed, defendants filed the
 3 instant motion to dismiss.

4 The fourth factor weighs against dismissing Matthews' claims. That is because, as noted
 5 *supra*, public policy favors disposing of cases on their merits. This factor is not weighty here,
 6 however. First, Matthews did not file a response opposing the motion, making resolution on the
 7 merits difficult, if not impossible. *Cf. Johnson v. Top Inv. Prop. LLC*, 2018 U.S. Dist. LEXIS 140051,
 8 *17–18 (E.D. Cal. Aug. 17, 2018) (“Although public policy generally favors the resolution of a case
 9 on its merits, as here, a defendant’s failure to appear and defend against a plaintiff’s claims makes
 10 a decision on the merits impossible.”) (citation omitted). Moreover, a resolution on the merits
 11 would not affect the outcome of the relief granted. According to the complaint, Matthews, who
 12 is African American, sat down at one of Southpoint’s bars and ordered a cocktail which was
 13 served to her in what she contends was a “paper” cup, a non-traditional method of presentation.
 14 Compl., ECF No. 1 at 4. Matthews claims to have experienced hostility and discrimination from
 15 Southpoint employees when she expressed distaste with the cocktail’s presentation and alleges
 16 that she was ultimately forced to leave the premises. *Id.* at 5. Title II of Civil Right Act of 1964
 17 (Title II) “prohibits discrimination . . . on the ground of race, color, religion, or national origin . .
 18 .” *Dunn v. Albertsons*, 2017 U.S. Dist. LEXIS 127815, *6 (D. Nev. Aug. 10, 2017) (citing 42 U.S.C. §
 19 2000a). “To state an actionable discrimination claim under the Act, a plaintiff must allege that
 20 he or she: (1) is a member of a protected class; (2) attempted to exercise the right to full benefits
 21 and enjoyment of a place of public accommodations; (3) was denied those benefits and
 22 enjoyment; and (4) was treated less favorably than similarly situated persons who are not
 23 members of the protected class.” *Smith v. Caesars Ent. Corp.*, 2019 U.S. Dist. LEXIS 190457, *7 (D.
 24 Nev. Nov. 1, 2019) (internal quotation marks and citation omitted). Even taking all of the
 25 complaint’s allegations as true, and after liberally construing² her pleading, Matthews fails to

26 ² Pro se filings are to be liberally construed. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (“A document filed pro se is to be liberally construed...”).

1 state a claim for relief under Title II.³ Specifically, she alleges no facts that any similarly situated
2 individuals outside of her protected class were treated more favorably than her. *See generally* ECF
3 No. 1. Thus, even considering the merits, dismissal would be appropriate here.

4 Last, with respect to whether less drastic measures have been considered, the court has
5 determined that dismissal without prejudice is proper here, which will permit Matthews the
6 opportunity to continue to pursue her claims. Accordingly, the fifth factor weighs in favor of
7 dismissal. Thus, after careful consideration of all the relevant factors, I grant defendants'
8 unopposed motion to dismiss.

9 **III. Conclusion**

10 IT IS THEREFORE ORDERED that defendants' motion to dismiss [ECF No. 10] is
11 GRANTED.

12 IT IS FURTHER ORDERED that each of Matthews' claims are dismissed without
13 prejudice. The Clerk of Court is kindly instructed to enter judgment accordingly and close this
14 case.

15 DATED: October 31, 2023

16 
17 Cristina D. Silva
18 United States District Judge
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26 ³ In deciding motions for judgement on pleadings, courts are typically limited to the four corners of the
complaint. *Beveridge v. City of Spokane*, 2021 U.S. App. LEXIS 21564. at 5* (9th Cir. July 21, 2021) (citing Fed.
R. Civ. P. 12(c), (d)).